

**JUN 27 2006**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**KARL WEBSTER,**

Petitioner - Appellant,

v.

**PEOPLE OF THE STATE OF  
CALIFORNIA; SAN BERNARDINO  
COUNTY SUPERIOR COURT;  
JAMES HALL, Warden,**

Respondents - Appellees.

No. 05-55656

D.C. No. CV-05-00148-MMM

**MEMORANDUM**\*

Appeal from the United States District Court  
for the Central District of California  
Margaret M. Morrow, District Judge, Presiding

Argued and Submitted June 9, 2006  
Pasadena, California

Before: **KOZINSKI** and **GOULD**, Circuit Judges, and **MARTINEZ**,\*\* District Judge.

---

\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* The Honorable Ricardo S. Martinez, United States District Judge for the Western District of Washington, sitting by designation.

In his petition for review to the California Supreme Court, Webster argued that his 25-years-to-life sentence is a cruel or unusual punishment under the California Constitution. He didn't assert, however, that his sentence violates the Eighth Amendment's prohibition on cruel and unusual punishment. Nor did he cite or discuss any federal laws or federal-court decisions. Petitioner's reliance on In re Lynch, 503 P.2d 921 (Cal. 1972), is misplaced. While Lynch does discuss the Eighth Amendment, it does so only for the purpose of construing California law. Petitioner thus failed to exhaust his Eighth Amendment claim in state court. 28 U.S.C. § 2254(b)(1)(A); see also Galvan v. Alaska Dep't of Corr., 397 F.3d 1198, 1205 (9th Cir. 2005).

To the extent the district court may have erred in failing to give Webster notice that it intended to dismiss the petition under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the error was harmless. Petitioner has now had the opportunity to raise his exhaustion argument before us, and we find the claim to be meritless.

**AFFIRMED.**